



08-CV-00168-PET

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AT SEATTLE  
CLERK U.S. DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF WASHINGTON

C08-0168 RSL  
Civil No.

Mohammed SABBAGHI,

PETITIONER/PLAINTIFF,

v.

MICHAEL MUKASEY, U.S. Attorney  
General, MICHAEL CHERTOFF,  
Secretary, Department of Homeland  
Security, ROBERT S. MUELLER III,  
Director, Federal Bureau of Investigation,  
JULIA HARRISON Seattle Field Office  
Director, U.S. Citizenship and Immigration  
Services, and LAURA LAUGHLIN,  
Seattle Special Agent in Charge, Federal  
Bureau of Investigations.

Agency Case No.: #73 217 257  
PETITION FOR  
NATURALIZATION HEARING  
AFTER FAILURE OF USCIS TO  
MAKE A NATURALIZATION  
APPLICATION DETERMINATION  
WITHIN 120 DAYS OF  
NATURALIZATION  
EXAMINATION PURSUANT TO 8  
U.S.C. 1447(b)  
COMPLAINT IN THE NATURE OF  
MANDAMUS

DEFENDANTS.

COMES NOW Petitioner, Mohammed Sabbaghi, by and through his counsel,  
and pursuant to 8 U.S.C. § 1447(b) and the jurisdictional citations listed below, does hereby  
bring the following complaint:

Subject Matter Jurisdiction

1. The Court has jurisdiction pursuant to 8 U.S.C. § 1447(b) to hold a  
hearing on the failure to make a determination on a naturalization application. The REAL ID

PETITION FOR NATURALIZATION  
Page 1 of 6

LAW OFFICES OF BART KLEIN  
605 1<sup>st</sup> Avenue South, Suite 500  
Seattle, WA 98104  
Phone: (206) 624-3787/624-6371(fax)  
[bart.klein@bartklein.com](mailto:bart.klein@bartklein.com)

Act, 8 U.S.C. § 1251(a)(2)(B), by its terms applies only to applications under Title II of the Immigration and Naturalization Act (INA), and is inapplicable to naturalization applications under Title III of the INA. Jurisdiction in this Court is also based upon Section 5 USC 706(1) and 28 U.S.C. 1331 and 1361, the other sections of Chapter 2 of the Title III of the I & N Act (Sections 8 U.S.C. 1421-1458) and the 8 CFR naturalization regulations.

2. On March 10, 2004, Ms. Mohammed Sabbaghi, filed an application for naturalization on Form N-400 with the Lincoln, Nebraska Service Center of the USCIS. Exhibit A. USCIS then scheduled him for fingerprinting, which he completed on April 9, 2004 and also July 6, 2006. An examination of his application was conducted on October 21, 2004, and he passed all elements of the examination. Exhibit C. But he was informed that the background security checks were pending. After litigation in this Court before Judge Robert S. Lasnik, based on a Section 8 USC 14447(b) petition filed on February 17, 2006, the case was settled by Stipulation on June 20, 2007, calling for a CIS decision within 30 days (see C06-0246RSL). Exhibit D. A denial determination was made by the USCIS on July 19, 2007, ~~Exhibit E~~ and an administrative appeal was taken by filing with the CIS the Form N-336 on July 26, 2007 (with fee paid of \$265). Exhibit ~~E~~ **E**. More than 120 days have elapsed since the date of the appeal filing, and more than 180 days have elapsed, which is the maximum allow by regulation for the administrative appeal interview (8 C.F.R. 336.2 "a reasonable period of time not to exceed 180 days from the date upon which the administrative appeal is filed), and respondents have failed to make another determination or schedule the administrative appeal interview.

### Venue

3. Venue lies in the Western District of Washington, the judicial district where petitioner resides. 8 U.S.C. § 1447(b) specifies that an applicant for naturalization may apply to the United States District Court for the District in which the applicant resides

for a hearing on the failure to make a determination.

### **Parties**

4. Petitioner is and has been a resident of the Seattle, WA area since 1989.

5. Respondents, Mr. Michael Mukasey, Attorney General of the United States, and Mr. Michael Chertoff, Secretary, Department of Homeland Security, are both responsible for the implementation of the immigration laws and it is their delegation of authority to administer the immigration laws to the U.S. Citizenship and Immigration Services (USCIS) that permits USCIS officials to act under color of authority of the United States.

6. Respondent, Julia Harrison, is the duly appointed Field Office Director of the Seattle, Washington office of the U.S. Citizenship and Immigration Services, and she is being sued in her official capacity. In this capacity Ms. Harrison has jurisdiction over naturalization benefits and petitioner's application. Respondent Robert S. Mueller III, is the Director of the Federal Bureau of Investigation, and he is being sued in his official capacity. In this capacity Mr. Mueller has jurisdiction over security checks performed on behalf of the U.S. Citizenship and Immigration Services in connection with naturalization applications, and his representative in the Seattle area is Laura Laughlin, Seattle Special Agent in Charge, and she is also being sued in her official capacity.

### **Facts**

7. On October 21, 2004, and March 17, 2007, an examination was conducted on Petitioner's application.

8. On October 21, 2004, and March 17, 2007, Petitioner demonstrated an understanding of the English language, including an ability to read, write and speak words in ordinary usage in the English language.

9. On October 21, 2004, and March 17, 2007, Petitioner demonstrated a knowledge and understanding of the fundamentals of the history, and of the principles and form of government of the United States.

10. On July 19, 2007, the N-400 application was denied.

11. On July 26, 2007, the N-336 administrative appeal form was filed with the \$265 filing fee. Exhibit F.

12. More than 120 days have elapsed since the date of the filing of the administrative appeal form, and more than 180 days have elapsed for the administrative appeal hearing to have been made, and defendants have failed to make a determination.

#### **Exhaustion**

12. The Petitioner is not required to exhaust administrative remedies. Nevertheless, Petitioner estimates that he has contacted the Seattle District Office of the USCIS requesting the administrative appeal hearing be set directly or indirectly at least four times. ~~Exhibit G.~~ There is no response.

#### **Cause of Action**

14. A petition for naturalization hearing to this court, pursuant to 8 U.S.C. § 1447(b) is proper given the failure of defendants to make a determination on the naturalization application within 120 days of the administrative appeal notice filing. In addition, Defendants' failure to set the schedule the administrative appeal hearing within 180 days of the appeal represents an unlawful withholding and unreasonable delay of agency action within the meaning of the Administrative Procedure Act, 5 U.S.C. § 706(1), and violates the Immigration & Nationality Act, and the applicable administrative regulation, namely that such naturalization appeal examination must be conducted in 180 days, and 8 U.S.C. § 1447(b) and naturalization regulations which requires a decision 120 days after such

administrative appeal filing.

15. Petitioner has previously applied for review of the failure to reschedule or make a determination, and there has been judicial review of such failure as listed above.

16. The Petitioner notes that Defendant Michael Chertoff, Secretary of the Department of Homeland Security, and Defendant Julia Harrison have been named as necessary parties under Armentero v. INS, 340 F.3d 1058 (9<sup>th</sup> Cir. 2003). The delay and failure to act in the instant case appears to be attributable to the failure of Defendants Chertoff and Defendant Harrison to meet their legal obligations under the Immigration and Nationality Act and the applicable rules and regulations.

17. The delay and failure to act also appear to have been attributable to the failure of Defendant Michael Mukasey, Attorney General of the United States, in his capacity to direct the Federal Bureau of Investigation to meet its legal obligations and duties under the Immigration and Nationality Act and the applicable rules and regulations, and to the failure of Defendant Robert S. Mueller III, Director Federal Bureau of Investigation, in his capacity to direct the Federal Bureau of Investigation to meet its legal obligations and duties under the Immigration and Nationality Act and the applicable rules and regulations.

#### **Prayer for Relief**

WHEREFORE, petitioner requests that this Court:

- (a) Assume jurisdiction over this matter;
- (b) Order defendants to appear before this Court and show cause, if any there is, why defendants have failed to schedule the administrative appeal hearing within 180 days;
- (c) Determine Petitioner's application for naturalization and naturalize him;
- (d) Award Petitioner reasonable costs and attorney's fees; and
- (e) Grant such further relief as the Court deems just and proper.

Respectfully submitted this 8th day of January, 2008.

LAW OFFICES OF BART KLEIN  
Bart Klein  
Attorney for Petitioner, WSBA #10909


### VERIFICATION

Bart Klein, the attorney for the Petitioner, and Petitioner, under penalty of perjury, hereby verify that the statements made in the above Petition are true and correct to the best of our knowledge.

Dated this 8th day of January, 2008.

Approved of Filing:

  
BART KLEIN

  
Mohammed Sabbaghi




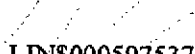

Receipt			NOTICE DATE March 17, 2004	
CASE TYPE N400 Application For Naturalization			INS A# A 073 217 257	
APPLICATION NUMBER LIN*000640844	RECEIVED DATE March 10, 2004	PRIORITY DATE March 10, 2004	PAGE 1 of 1	
APPLICANT NAME AND MAILING ADDRESS MOHAMMAD SABBAGHI c/o BART KLEIN LAW OFFICES OF BART KLEIN 605 FIRST AVENUE SUITE 500 SEATTLE WA 98104			PAYMENT INFORMATION: Single Application Fee: \$310.00 Total Amount Received: \$310.00 Total Balance Due: \$0.00	
				
<p>The above application has been received by our office and is in process. Our records indicate your personal information is as follows:</p> <p>Date of Birth:  Address Where You Live: 4136 92ND AVE SE MERCER ISLAND WA 98040</p> <p>Please verify your personal information listed above and immediately notify our office at the address or phone number listed below if there are any changes.</p> <p>You will be notified of the date and place of your interview when you have been scheduled by the local INS office. You should expect to be notified within 248 days of this notice.</p>				
<p>If you have any questions or comments regarding this notice or the status of your case, please contact our office at the below address or customer service number. You will be notified separately about any other cases you may have filed.</p> <p>If you have other questions about possible immigration benefits and services, filing information, or INS forms, please call the INS National Customer Service Center (NCSC) at 1-800-375-5283. If you are hearing impaired, please call the NCSC TDD at 1-800-767-1833.</p> <p>If you have access to the Internet, you can also visit INS at <a href="http://www.ins.usdoj.gov">www.ins.usdoj.gov</a>. Here you can find valuable information about forms and filing instructions, and about general immigration services and benefits. At present, this site does not provide case status information.</p>				
INS Office Address: US IMMIGRATION AND NATURALIZATION SERVICE PO BOX 87400 LINCOLN NE 68501-			INS Customer Service Number: (800) 375-5283	
LIN\$000597537			REPRESENTATIVE COPY	
				

Exhibit A





## THE UNITED STATES OF AMERICA

Request for Applicant to Appear for Naturalization Initial Interview			NOTICE DATE August 19, 2004
CASE TYPE N400 Application For Naturalization			INS A# A 073 217 257
APPLICATION NUMBER LIN*000640844	RECEIVED DATE March 10, 2004	PRIORITY DATE March 10, 2004	PAGE 1 of 1

## APPLICANT NAME AND MAILING ADDRESS

MOHAMMAD SABBAGHI  
c/o BART KLEIN ESQ  
605 1ST AVE STE 500  
SEATTLE WA 98104

## Please come to:

US CITIZENSHIP AND IMMIGRATION SERVICES  
12500 TUKWILA INTERNATIONAL BLVD  
SECOND FLOOR  
APPOINTMENT CHECK-IN COUNTER  
SEATTLE WA 98168

On (Date): Thursday, October 21, 2004

At (Time): 03:00 PM

You are hereby notified to appear for an interview on your Application for Naturalization at the date, time, and place indicated above. **Waiting room capacity is limited. Please do not arrive any earlier than 30 minutes before your scheduled appointment time.** The proceeding will take about two hours. If for any reason you cannot keep this appointment, return this letter immediately to the INS office address listed below with your explanation and a request for a new appointment; otherwise, no further action will be taken on your application.

If you are applying for citizenship for yourself, you will be tested on your knowledge of the government and history of the United States. You will also be tested on reading, writing, and speaking English, unless on the day you filed your application, you have been living in the United States for a total of at least 20 years as a lawful permanent resident and are over 50 years old, or you have been living in the United States for a total of 15 years as a lawful permanent resident and are over 55 years old, or unless you have a medically determinable disability (you must have filed form N648 Medical Certification for Disability Exception, with your N400 Application for Naturalization).

## You MUST BRING the following with you to the interview:

- This letter.
- Your Alien Registration Card (green card).
- Any evidence of Selective Service Registration.
- Your passport and/or any other documents you used in connection with any entries into the United States.
- Those items noted below which are applicable to you:

## If applying for NATURALIZATION AS THE SPOUSE of a United States Citizen;

- Your marriage certificate.
- Proof of death or divorce for each prior marriage of yourself or spouse.
- Your spouse's birth or naturalization certificate or certificate of citizenship.

## If applying for NATURALIZATION as a member of the United States Armed Forces;

- Your discharge certificate, or form DD 214.

If copies of a document were submitted as evidence with your N400 application, the originals of those documents should be brought to the interview.

**PLEASE keep this appointment, even if you do not have all the items indicated above.**

If you have any questions or comments regarding this notice or the status of your case, please contact our office at the below address or customer service number. You will be notified separately about any other cases you may have filed.

## INS Office Address:

US IMMIGRATION AND NATURALIZATION SERVICE  
SECOND FLOOR  
12500 TUKWILA INTERNATIONAL BLVD  
SEATTLE WA 98168-

## INS Customer Service Number:

(800) 375-5283

## APPLICANT COPY



Exhibit C

Hon. Robert S. Lasnik

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

MOHAMMED SABBAGHI,  
A# 73-217-257,

Plaintiff,

ALBERTO R. GONZALES, et al.,

Defendants.

Case No. 06-0246 RSL

JOINT STIPULATION FOR  
VOLUNTARY DISMISSAL AND  
REMAND TO USCIS FOR  
ADJUDICATION

**JOINT STIPULATION**

COMES NOW, the parties, by and through their respective attorneys of record, and respectively ask the Court to remand the N-400 Application for Naturalization filed by Plaintiff to the United States Citizenship and Immigration Services ("USCIS"), with an order pursuant to 8 U.S.C. § 1447(b), that USCIS shall adjudicate and issue a decision on the Application within thirty (30) days from the date of the Court's Order. In addition, the parties respectfully stipulate to the dismissal of Plaintiff's case without prejudice, and without claim of either party to attorney fees or costs, and the parties respectfully stipulate that the Court shall retain jurisdiction to enforce the terms of this stipulation.

1 DATED: June 20, 2007

DATED: June 20, 2007.

2  
3 LAW OFFICES OF BART KLEIN

JEFFREY C. SULLIVAN  
UNITED STATES ATTORNEY

4  
5 /s/ Bart Klein

BART KLEIN, WSBA #10909

6 Law Offices of Bart Klein  
605 First Avenue, Suite 500  
7 Seattle, WA 98104

8 Phone: 206-624-3787

9 Fax: 206-624-6371

Email: bklein@bartklein.com

Attorneys for Plaintiff

/s/ Priscilla T. Chan

PRISCILLA T. CHAN, WSBA No. 28533

Assistant United States Attorney

United States Attorney's Office

Western District of Washington

700 Stewart Street, Suite 5220

Seattle, Washington 98101

Phone: 206-533-7970

Fax: 206-553-4073

Email: [Priscilla.Chan@usdoj.gov](mailto:Priscilla.Chan@usdoj.gov)

Attorney for Defendants

11  
12 **ORDER**

13 The parties having so stipulated and agreed, it is hereby **SO ORDERED**. The Clerk is  
14 directed to send copies of this Order to all counsel of record.

15  
16 DATED this \_\_\_\_\_ day of \_\_\_\_\_, 2007.

17  
18  
19 ROBERT S. LASNIK  
U.S. DISTRICT COURT JUDGE

20 Presented by:

21  
22 JEFFREY C. SULLIVAN  
United States Attorney

23  
24 /s/ Priscilla T. Chan

PRISCILLA T. CHAN

25 Assistant United States Attorney

Attorney for Defendants

26 United States Attorney's Office

Western District of Washington

27 700 Stewart Street, Suite 5220

(206) 553-7970

28 [priscilla.chan@usdoj.gov](mailto:priscilla.chan@usdoj.gov)

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/s/ Bart Klein  
BART KLEIN, WSBA #10909  
Law Offices of Bart Klein  
605 First Avenue, Suite 500  
Seattle, WA 98104  
Phone: 206-624-3787  
Fax: 206-624-6371  
Email: bklein@bartklein.com  
Attorneys for Plaintiff

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this date, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the following CM/ECF participants:

bklein@bartklein.com

and I further certify that on the same date I caused to be emailed and mailed by United States Postal Service the document to the following non-CM/ECF participants:

- 0 -

Dated this 20th day of June, 2007.

/s/ Priscilla T. Chan

PRISCILLA T. CHAN  
United States Attorney's Office  
700 Stewart Street, Suite 5220  
Seattle, Washington 98101-1271  
Phone: 206-553-7970  
Fax: 206-553-4073  
Email: Priscilla.Chan@usdoj.gov

DEPT OF HOMELAND SEC  
BCIS SEATTLE  
RETAIN THIS RECEIPT

10:57AM Jul 26/07  
00-0000 002 SEA-LZ  
#21940

A # 73217257  
Last Name SABBAGHI  
First Name MOHAMMAD

N-336 \$265.00

Check \$265.00

\*Official\*  
\*Document\*

U.S. Department of Homeland Security  
U.S. Citizenship and Immigration Services

**N-336, Request for a Hearing on a Decision  
in Naturalization Proceedings Under Section 336 of the Act**

Decision: <input type="checkbox"/> Grant <input type="checkbox"/> Denial	Fee:
---	------

1. In the Matter of: (Name of Naturalization Applicant) Mohammad Sabbaghi	File Number: A 073 217 257
--	-------------------------------

2. I am filing a request for hearing on the decision dated:

7/19/07

3. Please check the one block which applies:

- a. ☐ I am *not submitting* a separate brief, statement or evidence.
- b. ☒ I *am submitting* a separate brief, statement and/or evidence with this form.
- c. ☐ I need \_\_\_\_\_ days to submit a brief, statement and/or evidence to USCIS. (May be granted only for good cause shown. Explain in a separate letter.)

4. Person Filing Request:

Name (Please Type or Print in Black Ink.)

Address (Street Number and Name)

(Apt. Number)

(City)

**BART KLEIN, Attorney**

605 1st Ave., Suite 500  
Seattle, WA 98104  
(206) 624-3787  
Fax (206) 624-6371

(State)

(Zip Code)

Signature

Date (mm/dd/yyyy)

07/24/07

- ☐ I am an attorney or representative and I represent the applicant requesting a hearing on a naturalization proceeding. [You must attach a Notice of Entry of Appearance (Form G-28) if you are an attorney or representative and did not previously submit such a form.]  
(Person for whom you are appearing)

5. Briefly state the reason(s) for this request for a hearing:

Hacked Job Denial. V. Bates Class Action by same  
Federal Judge re: Good Moral Character.

(A) No need to file Mohanna LLC - shell corporation - see  
2/2/2006 letter of attorney - not a "business!"

(B) Civil Dispute is not an arrest or detention  
Never has been required to disclose civil case  
Never arrested for any criminal ground.

(C) Customs stops are not detention if no reason given for  
two stop